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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,195	07/23/2001	Kathleen C.M. Campbell	SIU 7396	2942

321 7590 04/07/2005

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

COOK, REBECCA

ART UNIT PAPER NUMBER

1614

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/911,195

Applicant(s)

CAMPBELL, KATHLEEN C.M.

Examiner

Rebecca Cook

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-29,32-41 and 57-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-29,32-41 and 57-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/10/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

In view of applicant's argument priority for the instant methods of use is seen in U.S. Application Serial No. 09/057,065 (now U.S. Patent No. 6,265,386) filed on April 8, 1998.

Claim Rejections - 35 USC § 112

Claims 20-29, 32-41 and 57-74 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for preventing ototoxicity, does not reasonably provide enablement for treating hearing loss. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. Attachment A to the Declaration submitted under 37 CFR 1.132 of January 14, 2005 by Dr. Campbell recites (page 8) that the results from rescue dosing of animals after they were exposed to noise did not result in significance.

Claims 20-29, 32-41 and 57-74 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear that exposure to noise causes the ototoxicity.

In view of the amendments to the claims the earlier rejections under 35 USC 112, paragraph two, are overcome.

In view of applicant's arguments and amendments to the claims, the earlier rejections under 35 USC 102(b) over Campbell and 6,649,621 (Kopke) are withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-29 and 32-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell. Campbell discloses a method of using D-methionine to protect against ototoxicity caused by cisplatin. The instant claims differ over Campbell in reciting a method of preventing or treating ototoxicity in a patient exposed to noise. However, the claims do not require that the ototoxicity be caused by noise. It would be obvious to one of ordinary skill in the art that a patient receiving methionine to prevent or treat ototoxicity caused by cisplatin could also be exposed to noise that also results in ototoxicity.

Dependent claims further differ in reciting L-methionine, dosage and dosage regimens. However, once a method of use is known, it is within the skill of the artisan to determine the optimum dosage and dosage regimens. Additionally, it would be obvious that the L-isomer would have the same use as the D-isomer.

The Declaration submitted under 37 CFR 1.132 of January 14, 2005 by Dr. Campbell has been considered, but is not persuasive, since the claims are not clear that the ototoxicity is caused by noise.

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In view of the Declaration submitted under 37 CFR 1.132 of January 14, 2005 by Dr. Campbell the earlier rejection under 35 USC 103(a) over Kopke is withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Cook whose telephone number is (571) 272-0571. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached on (571) 272-0951.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Renee Jones (571) 272-0547 in Customer Service.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The official fax number is 571-273-8300.

Rebecca Cook

A handwritten signature in black ink that reads "Rebecca Cook". The signature is written in a cursive, flowing style.

Primary Examiner
Art Unit 1614

April 5, 2005